

# Order

Michigan Supreme Court  
Lansing, Michigan

January 13, 2023

Elizabeth T. Clement,  
Chief Justice

163394

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

v

SC: 163394  
COA: 357259  
Saginaw CC: 19-046708-FH

LOREN TROUEZE ROBINSON,  
Defendant-Appellant.

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By order of December 1, 2021, the application for leave to appeal the June 28, 2021 order of the Court of Appeals was held in abeyance pending the decision in *People v Dixon* (Docket No. 162221). On order of the Court, the case having been decided on April 28, 2022, 509 Mich 170 (2022), the application is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the Saginaw Circuit Court's April 29, 2021 order denying the defendant's supplemental motion to correct an invalid sentence and REMAND this case to the trial court for reconsideration of the motion in light of this Court's holding in *Dixon*.

We do not retain jurisdiction.

VIVIANO, J. (*dissenting*).

The majority today remands this case for reconsideration in light of *People v Dixon*, 509 Mich 170 (2022), which held that a prisoner who simply possesses a cell phone does not "threaten the security of a penal institution" for purposes of Offense Variable (OV) 19 in the sentencing guidelines. MCL 777.49. I dissented from that conclusion because I found it hard to fathom. To the contrary, I continue to believe that a prisoner who possesses a cell phone presents a clear and present danger to prison staff and other inmates. Therefore, I dissent from the Court's remand order.

In this case, defendant was seen on video placing an item in the padding of a basketball pole in the prison yard. The item turned out to be a cell phone. Investigators searched the cell phone's records and located a text message to a number that defendant had also called through the prison phone system—indeed, statewide prison phone records

revealed he was the only prisoner in Michigan to call that number. Defendant pleaded guilty as a fourth-offense habitual offender to one count of possessing a cell phone as a prisoner. MCL 800.283a(2). OV 19 was scored at 25 points for “conduct [that] threatened the security of a penal institution” based on defendant’s possession of the cell phone. MCL 777.49(a). Defendant did not object to the resulting sentencing guidelines range and, in any event, the trial court imposed a sentence below that range. Defendant moved to withdraw his guilty plea and correct the allegedly invalid sentence. The trial court denied the motion. The Court of Appeals denied defendant’s application for lack of merit. Defendant then applied for leave to appeal in this Court. This Court held defendant’s application in abeyance pending its decision in *Dixon*, and today it vacates and remands for reconsideration in light of this Court’s decision in that case.

As I argued in my dissent in *Dixon*, “[c]ommon sense and the overwhelming consensus of legal authorities tell us that prisoners who possess cell phones within the prison walls pose an obvious danger to prison staff and other prisoners . . . .” *Dixon*, 509 Mich at 182 (VIVIANO, J., dissenting). Moreover, the Legislature clearly indicated that cell phones threaten the security of penal institutions when it enacted MCL 800.283a and designated it as a public-safety offense. And as I noted in *Dixon*, numerous other courts and commentators have noted the safety risks posed by cell phones in prisons. *Id.* at 186-188. Even more recently, several United States senators and representatives introduced the Cellphone Jamming Reform Act of 2022, explaining the dangers of cell phone possession in prisons. The bill’s sponsors noted that “[i]nmates have used contraband cellphones to conduct illegal activities, including ordering hits on individuals outside of the prison walls, running illegal drug operations, conducting illegal business deals, facilitating sex trafficking, and organizing escapes which endanger correctional employees, other inmates, and members of the public,” and they provided several examples of disputes over cell phones sparking brawls inside prisons, of cell phones being used to conduct assassinations, and of cell phones permitting white-collar criminals to continue their work from inside prison walls.<sup>1</sup> In one recent case, prisoners used a cell phone to shoot a rap video inside a Michigan prison, with clear images of the corrections officers in the background (who were apparently unaware of what was transpiring), and post it online. Egan & Hendrickson, *Rap*

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<sup>1</sup> Senator Tom Cotton, Press Release, *Senator Cotton, Rep. Kustoff, Colleagues Introduce Bills to Stop Contraband Cellphone Use In Prisons* (August 3, 2022), <<https://www.cotton.senate.gov/news/press-releases/senator-cotton-rep-kustoff-colleagues-introduce-bill-to-stop-contraband-cellphone-use-in-prisons>> (accessed January 3, 2023) [<https://perma.cc/JD2H-KYLC>]; see also Cellphone Jamming Reform Act of 2022, S 4699, 117th Cong (2022); Cellphone Jamming Reform Act of 2022, HR 8645, 117th Cong (2022).

*Video Filmed Inside Michigan Prison Cell, Posted on YouTube Prompts Investigation*, Detroit Free Press (November 29, 2022).<sup>2</sup> An official involved in the investigation matter-of-factly explained, “‘It’s incredibly dangerous,’ to have phones inside state prisons, ‘especially with capability of getting onto the internet,’ . . . because they can be used to arrange escapes, harass witnesses, or place ‘hits’ on people inside or outside the prison . . . .” *Id.* The majority opinion in *Dixon* simply ignores the realities of life inside a jail or prison.

In this case, just as in *Dixon*, I believe defendant’s simple possession of a cell phone threatened the security of the prison and therefore OV 19 was properly scored under the correct interpretation of MCL 777.49. But even under the majority’s myopic interpretation of the statute in *Dixon*, it appears the OV was correctly scored here. In *Dixon*, the majority agreed with the basic point that cell phones can be used in threatening ways. *Dixon*, 509 Mich at 181. However, the majority noted in that case that “no facts showed that [the defendant] used the phone or that it was operational.” *Id.* Because the Court found no facts beyond constructive possession, “there was no evidence that [the defendant’s] conduct threatened the security of the prison.” *Id.* Here, there is evidence that the cell phone worked and that defendant had used it to send a text message. Consequently, the case appears readily distinguishable from *Dixon*.

I do not believe *Dixon* was correctly decided and, in any event, it appears readily distinguishable from this case. Therefore, I respectfully dissent from the Court’s order remanding the present case for reconsideration in light of *Dixon*.

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<sup>2</sup>Available at

<<https://www.freep.com/story/news/local/michigan/macomb/2022/11/29/rap-video-macomb-jail/69685316007/>> (accessed January 3, 2023) [<https://perma.cc/RZ38-4K5K>].



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 13, 2023

Clerk